

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

CHERYL J. CALDWELL,

Appellant.

DOCKET NUMBER WD73194

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 8, 2011

APPEAL FROM

The Circuit Court of Johnson County, Missouri
The Honorable W. Sue Dodson, Judge

JUDGES

Division Two: Pfeiffer, P.J., and Howard and Welsh, JJ.

CONCURRING.

ATTORNEYS

Thomas K. Hendrix, Jr., Assistant Prosecuting Attorney
Warrensburg, MO

Attorney for Respondent,

Margaret M. Johnston, Assistant State Public Defender
Columbia, MO

Attorney for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,)
)
Respondent,)
v.) **OPINION FILED:**
) **November 8, 2011**
CHERYL J. CALDWELL,)
)
Appellant.)

WD73194

Johnson County

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, and
Victor C. Howard and James Edward Welsh, Judges

Cheryl J. Caldwell was charged by Information with trespass in the first degree, § 569.140, RSMo 2000, for knowingly remaining unlawfully upon real property located at 160 NW 251, Warrensburg, Johnson County, Missouri, and possessed by the University of Central Missouri ("University"), after being given actual notice of such trespass; and with resisting arrest, § 575.150, RSMo Cum. Supp. 2007, by refusing to exit her vehicle at the request of an officer. Caldwell appeals the Judgment of the Circuit Court of Johnson County, after having been found guilty by a jury, asserting that the State did not present sufficient evidence to convict her of either offense.

REVERSED.

Division TWO holds:

1. By charging Caldwell with knowingly remaining on address-identified real property, after notice against trespass by actual communication, the State assumed the burden of proving those facts. Although the State proved actual communication of trespass, in that a University public safety officer informed Caldwell that she could not study in her car at the University airport after the airport was closed, there was no evidence presented that identified the address in the Information and verdict-directing instruction as the University airport. While the prosecutor told the jurors *during closing argument* that the real property located at "160 Northwest 251" was owned by the University, such evidence was *not* adduced at trial, and arguments and

statements of counsel are not evidence. Thus, there was insufficient evidence to support Caldwell's conviction for trespassing in the first degree on the basis of the charge against her.

2. A person resists arrest when: (1) she knows or reasonably should know a law enforcement officer is making an arrest, and (2) she resists the arrest by using or threatening the use of violence or physical force (3) for the purpose of preventing the officer from effecting the arrest. Under section 575.150.1, resisting arrest is a crime if the person being arrested resists by one of five separate means: using violence, threatening to use violence, using physical force, threatening to use physical force, or by fleeing.

Mere proof of a defendant's refusal to exit a locked vehicle when instructed to do so by a law enforcement officer is not sufficient to establish the "physical force" necessary for a conviction under section 575.150.1(1). The State presented no evidence that Caldwell exerted any physical force, violent or non-violent, in resisting the officer's arrest. In fact, there was no evidence whatsoever as to Caldwell's actions after the officers unlocked the doors to her vehicle. Thus, there was insufficient evidence to prove that she resisted arrest by using or threatening the use of violence or physical force or by fleeing from law enforcement personnel at the scene of her arrest.

Opinion by: Mark D. Pfeiffer, Presiding Judge

November 8, 2011

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